

RECEIVED
CENTRAL FAX CENTER
JUN 04 2007

LAW OFFICES OF
FAY KAPLUN & MARCIN, LLP
INTELLECTUAL PROPERTY LAW

150 BROADWAY, SUITE 702
NEW YORK, NEW YORK 10038
PHONE: (212) 619-6000
FAX: (212) 619-0276
WWW.FKMIPLAW.COM

FACSIMILE COVER SHEET

FAX NO : 571-273-8300
TO : Commissioner for Patents
Mail Stop: Appeal Brief-Patents
FROM : Oleg F. Kaplun, Esq. of Fay Kaplun & Marcin, LLP
DATE : June 4, 2007
SUBJECT : U.S. Patent Appln. Serial No. 10/752,257
for *Injection Access Port With Chamfered Top Hat Septum Design*
Inventor(s): Girard et al.
Your Ref.: 03-318
Our Ref.: 10123/04001

NUMBER OF PAGES INCLUDING COVER : 17

MESSAGE:

Please see attached.

Thank you.

IF ANY PAGES WERE NOT RECEIVED OR ARE ILLEGIBLE, PLEASE CALL (212) 619-6000 AS SOON AS POSSIBLE

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. We will reimburse any costs you incur in notifying us and returning the message to us. Thank you.

Attorney Docket No. 10123/04001 (03-318)

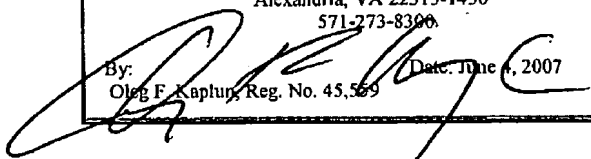
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**RECEIVED
CENTRAL FAX CENTER****JUN 4 2007**

Applicant(s) : Girard et al.
Serial No. : 10/752,257
Filed : January 6, 2004
For : Injection Access Port With Chamfered Top Hat Septum Design
Group Art Unit : 3767
Examiner : Phillip Gray
Confirmation No. : 4003

Mail Stop: Appeal Brief - Patent
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Certificate of Facsimile/Mailing
I hereby certify that this correspondence is being deposited via
facsimile or First Class Mail addressed to:

Mail Stop: Appeal Brief - Patent
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
571-273-8300

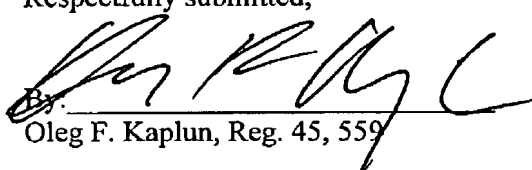
By:  Date: June 4, 2007
Oleg F. Kaplun, Reg. No. 45,559

TRANSMITTAL

In response to the Notice of Appeal filed April 4, 2007 transmitted herewith please find an Appeal Brief for filing in the above-identified application. Please charge the Credit Card of **Fay Kaplun & Marcin, LLP** in the amount of \$500.00 (PTO-Form 2038 is enclosed herewith). The Commissioner is hereby authorized to charge the **Deposit Account of Fay Kaplun & Marcin, LLP NO. 50-1492** for any additional required fees. A copy of this paper is enclosed for that purpose.

Respectfully submitted,

Dated: June 4, 2007


By: Oleg F. Kaplun, Reg. 45, 559

Fay Kaplun & Marcin, LLP
150 Broadway, Suite 702
New York, NY 10038
Tel: (212) 619-6000
Fax: (212) 619-0276

PATENT
Attorney Docket No.: 10123 - 04001

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

**RECEIVED
CENTRAL FAX CENTER**

JUN 04 2007

In re Application of:

Girard et al.

Serial No.: 10/752,257

Filed: January 6, 2004

For: INJECTION ACCESS PORT WITH
CHAMFERED TOP HAT SEPTUM
DESIGN

Group Art Unit: 3767

Examiner: Phillip Gray

**Board of Patent Appeals and
Interferences**

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Arlington, VA 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

In support of the Notice of Appeal filed April 4, 2007, and pursuant to 37 C.F.R. § 41.37, Appellant presents an Appeal Brief in the above-captioned application.

This is an appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 1-18 in the Final Office Action dated November 29, 2006. The appealed claims are set forth in the attached Claims Appendix.

06/05/2007 TL0111 00000025 10752257

01 FC:1402

500.00 0P

RECEIVED
CENTRAL FAX CENTER

JUN 04 2007

Serial No.: 10/752,257

Group Art Unit: 3767

Attorney Docket No.: 10123 - 04001

1. **Real Party in Interest**

This application is assigned to Boston Scientific Corporation, the real party in interest.

2. **Related Appeals and Interferences**

There are no other appeals or interferences which would directly affect, be directly affected, or have a bearing on the instant appeal.

3. **Status of the Claims**

Claims 1-18 have been rejected in the final Office Action, and are the subject of the present appeal.

4. **Status of Amendments**

All amendments submitted by the Appellant have been entered.

5. **Summary of Claimed Subject Matter**

Independent claim 1 recites an access port 100 comprising a housing with a first opening 202 therein and a septum 106 containing an operative surface 112 mounted within said housing sealing the first opening 202 and self-sealing after penetration by a needle. (See Specification, p. 6, li. 22 – p. 7, li. 6; FIGS. 1,2). Claim 1 also recites that the septum 106 is secured to the housing via an attachment portion 114, wherein the attachment portion 114 includes an annular surface 210 extending radially beyond a periphery of the operative surface of the membrane 112. (See Specification, p. 7, ll. 6-24; FIG. 2). The annular surface 210 is coupled with the operative surface of the membrane 112 by a chamfer portion 208, the chamfer portion 208 being subject to a force substantially perpendicular to the annular surface 210. (See Specification, p. 7, ll. 10-18; FIGS.

Serial No.: 10/752,257
Group Art Unit: 3767
Attorney Docket No.: 10123 - 04001

2,3). Claim 1 also recites that the chamfered portion 208 of the access port 100 redirects a portion of the force to compress the operative surface of the membrane 112 in a direction parallel to the annular surface 210, so as to reduce the load on the operative surface of the membrane 112. (See Specification, p. 7, li. 29 – p. 8, li. 4; FIG. 3).

Independent claim 12 details a septum 106 for an access port 100 comprising an attachment portion 114 including an annular surface 210 adapted to abut a septum seat 204 of the access port 100. (See Specification, p. 7, li. 20-27; FIG. 2). Furthermore, claim 12 details a self sealing operative surface 112 located on the septum 106 which is adapted to permit penetration by a needle wherein a periphery of the operative surface 112 is located radially within a periphery of the annular surface 210 of the septum 106. (See Specification, p. 7, li. 5-12). Claim 12 also details a chamfered portion 208 of the septum 106 which provides a transition between the attachment portion 114 and the operative surface 112. This chamfered portion 208 redirects a portion of the force applied thereon to compress the operative surface 112. (See Specification, p. 7, li. 10-18; FIG. 3).

6. **Grounds of Rejection to be Reviewed on Appeal**

- I. Whether Claims 1- 18 are Unpatentable Under 35 U.S.C. § 102 (b) as Anticipated by U.S. Patent No. 5,147,483 to Melsky et al. ("Melsky")

7. **Argument**

- I. The Rejection of Claims 1- 18 and 25 Under 35 U.S.C. § 102 (b) as Anticipated by Wong Should Be Reversed

A. **The Examiner's Rejection**

In the Final Office Action, the Examiner rejects claims 1- 18 under 35 U.S.C. 102(b) as being unpatentable over Melsky. (See 11/29/2006 Office Action, pp. 3-4).

Claim 1 recites an access port comprising a septum including an operative surface covering

Serial No.: 10/752,257
Group Art Unit: 3767
Attorney Docket No.: 10123 - 04001

an opening of a housing and an attachment portion for securing the septum to the housing and further including *“an annular surface extending radially beyond a periphery of the operative surface and separated from the operative surface in a direction substantially perpendicular to the annular surface.”* Claim 1 further states that the annular surface is *coupled to the operative surface by a chamfer which, when the septum is mounted within the housing, is subject to a force oriented substantially perpendicularly with respect to the annular surface*, the chamfered portion redirecting a portion of the force to compress the operative surface in a direction substantially parallel to the annular surface.”

Similarly, claim 12 recites a septum comprising *“an attachment portion adapted to abut a septum seat of the access port, the attachment portion including an annular surface” and “an operative surface adapted to permit penetration by a needle and resealing itself after removal of the needle, a periphery of the operative surface being radially within a periphery of the annular surface” and “a chamfered portion providing a transition between the attachment portion and the operative surface, the chamfered portion re-directing a component of a force applied to the chamfered portion to compress the operative surface.”*

B. The Cited Reference Does Not Disclose an Attachment Portion Including an Annular Surface Extending Radially Beyond a Periphery of the Operative Surface and Separated from the Operative Surface in a Direction Substantially Perpendicular to the Annular Surface.

The septum 50 of the Melsky device does not include an attachment portion including an annular surface *“extending radially beyond a periphery of the operative surface [of the septum] and separated from the operative surface in a direction substantially perpendicular to the annular surface,”* as recited in claim 1. Furthermore, Melsky does not show or suggest an annular surface

Serial No.: 10/752,257
Group Art Unit: 3767
Attorney Docket No.: 10123 - 04001

“coupled to the operative surface by a chamfer which, when the septum is mounted within the housing, is subject to a force oriented substantially perpendicularly with respect to the annular surface,” as recited in claim 1. Rather, as discussed below, Melsky simply shows a septum with an angled side surface (i.e., a substantially trapezoidal cross-section) that extends across the entire thickness of the septum and does not couple an operative surface to an annular attachment portion.

The Examiner argues that Melsky discloses a chamfer attachment portion comprising a surface angled relative to the operative surface that forms a 45-degree angle and a stepped surface. The Examiner refers only to Figures 3A and 3B in support of this stepped surface. It is respectfully submitted that Figure 3A shows only an angled side surface of the septum 50 forming a portion of a conical outer wall of the septum 50. The septum 50 does not include an “annular surface extending radially beyond a periphery of the operative surface and separated from the operative surface in a direction substantially perpendicular to the annular surface,” as recited in claim 1. It is respectfully submitted that the stepped surface referred to by the Examiner is simply a portion of the frusto-conical outer surface of the septum 50 when deformed through contact with portions of the housing of the port 40. Specifically, Melsky describes the septum 50 as “domed” and “frusto-conical” and states that, upon insertion into the port 40 containing the ledge 92 and notches 90 and 90A, the elastic restoring forces of the septum 50 cause the septum 50 to deform about and conform to the notches 90. (*See* Melsky, col. 6, ll. 45-65). A chamfer is an angled surface at the intersection between two surfaces. Thus, the claim requires first and second surfaces joined to one another by an angled third surface called the chamfer. In this case, there is the operative surface, the annular surface and the chamfered portion providing a transition between these surfaces. It is therefore noted that the septum 50 of the Melsky device does not contain an annular surface as recited and furthermore, there is no chamfer coupling the annular surface to the operative surface, as recited in claim 1.

Serial No.: 10/752,257
Group Art Unit: 3767
Attorney Docket No.: 10123 - 04001

It is submitted that Melsky neither illustrates nor describes a septum including an attachment portion "including an annular surface" and an operative surface having "*a periphery...radially within a periphery of the annular surface*" and "*a chamfered portion providing a transition between the attachment portion and the operative surface, the chamfered portion re-directing a component of a force applied to the chamfered portion to compress the operative surface.*"

It is therefore respectfully submitted that claims 1 is not anticipated by Melsky and that this rejection should be withdrawn. Because claims 2 - 11 depend from and, therefore, include the limitations of claim 1, it is submitted that these claims are also allowable.

Furthermore, claim 9 recites an "access port according to claim 1, wherein the annular surface abuts a septum seat of the housing." The Examiner argues that the septum seat 204 of the present invention is comparable to the ledge 92 of the entry port 40 of the Melsky device. However, it is noted that, although the septum 50 of the Melsky device is seated on the ledge 92 of the entry port 40, no annular surface of the Melsky device abuts the ledge 92 of the entry port 40, as recited in claim 9. Rather, the frusto-conical portion of the septum 50 abuts the lower portion of the entry port 90 at the ledge 40. Claim 1 defines "annular surface" as a surface "extending radially beyond a periphery of the operative surface." According to this definition, the top edge margin 66, not the ledge 40, would be designated as the annular surface in the Melsky device. It is therefore submitted that Melsky does not disclose an "access port according to claim 1, wherein the annular surface abuts a septum seat of the housing" as recited in claim 9 and that claim 9 is allowable for at least this additional reason.

Claim 11 recites an "access port according to claim 1, wherein the operative surface comprises a membrane which, when unconstrained has a dimension greater than a corresponding dimension of the first opening so that, when placed within the first opening, the operative surface is compressed thereby." Melsky, on the other hand, discloses a device wherein "nearly the entire top

Serial No.: 10/752,257
Group Art Unit: 3767
Attorney Docket No.: 10123 - 04001

surface of the infusion device consists of septum." (See Melsky, col. 5, ll. 57-60). It is therefore evident that the septum 50 of the Melsky device is at least smaller than the first opening. Additionally, it is noted that there is no disclosure in the Melsky device that the operative surface of the septum 50 is greater than the first opening into which it is placed. Furthermore, the septum 50 of the Melsky device contains a frusto-conical outer surface, which is used to hold the septum in place in the housing via pressure applied at the *base* of the frusto-conical septum 50. (See Melsky, col. 69, ll. 45-65). Claim 11, on the other hand, explicitly states that the membrane is held in place by a compression force at the opening of the device, not within the internal structure of the housing. It is therefore submitted that claim 11 is allowable for at least these additional reasons.

Claim 12 recites limitations substantially similar to claim 1. It is therefore respectfully submitted that claim 12 is allowable for at least the same reasons noted above in regard to claim 1. Since claims 13 - 18 depend from, and, therefore, include all the limitations of claim 12, it is submitted that these claims are also allowable.

RECEIVED
CENTRAL FAX CENTER

JUN 04 2007

Serial No.: 10/752,257

Group Art Unit: 3767

Attorney Docket No.: 10123 - 04001

8. Conclusion

For the reasons set forth above, Appellant respectfully requests that the Board reverse the final rejections of the claims by the Examiner under 35 U.S.C. § 102(b).

Respectfully submitted,

Date: 6/4/07

By: 

Greg F. Kaplun (Reg. No. 45,659)

Fay Kaplun & Marcin, LLP
150 Broadway, Suite 702
New York, NY 10038
Tel: (212) 619-6000
Fax: (212) 619-0276

RECEIVED
CENTRAL FAX CENTER

JUN 4 2007

Serial No.: 10/752,257

Group Art Unit: 3767

Attorney Docket No.: 10123 - 04001

CLAIMS APPENDIX

1. An access port comprising:
a housing with a first opening formed therein; and
a septum mounted within the housing sealing the first opening, the septum including an operative surface covering the first opening and self-sealing after penetration by a needle and an attachment portion for securing the septum to the housing, the attachment portion including an annular surface extending radially beyond a periphery of the operative surface and separated from the operative surface in a direction substantially perpendicular to the annular surface, the annular surface being coupled to the operative surface by a chamfer which, when the septum is mounted within the housing, is subject to a force oriented substantially perpendicularly with respect to the annular surface, the chamfered portion redirecting a portion of the force to compress the operative surface in a direction substantially parallel to the annular surface.
2. The access port according to claim 1, wherein the housing includes a second opening for connection to a catheter.
3. The access port according to claim 1, wherein a base of the housing forms a septum seat and a cover of the housing secures the septum on the seat so that the attachment portion is compressed therebetween.
4. The access port according to claim 1, wherein the chamfer comprises at least one surface angled relative to the operative surface and the annular surface.
5. The access port according to claim 4, wherein the at least one angled surface forms a 45

Serial No.: 10/752,257
Group Art Unit: 3767
Attorney Docket No.: 10123 - 04001

degree angle to the operative surface.

6. The access port according to claim 1, wherein the chamfer comprises a stepped surface extending away from the operative surface.
7. The access port according to claim 1, wherein the chamfer comprises a curved fillet extending away from the operative surface.
8. The access port according to claim 7, wherein the curved fillet has a substantially constant radius of curvature.
9. The access port according to claim 1, wherein the annular surface abuts a septum seat of the housing.
10. The access port according to claim 1, wherein the operative surface comprises a substantially planar membrane overlying the first opening.
11. The access port according to claim 1, wherein the operative surface comprises a membrane which, when unconstrained has a dimension greater than a corresponding dimension of the first opening so that, when placed within the first opening the operative surface is compressed thereby.
12. A septum for an access port, comprising:
an attachment portion adapted to abut a septum seat of the access port, the attachment portion including an annular surface;

Serial No.: 10/752,257

Group Art Unit: 3767

Attorney Docket No.: 10123 - 04001

an operative surface adapted to permit penetration by a needle and resealing itself after removal of the needle, a periphery of the operative surface being radially within a periphery of the annular surface; and

a chamfered portion providing a transition between the attachment portion and the operative surface, the chamfered portion re-directing a component of a force applied to the chamfered portion to compress the operative surface.

13. The septum according to claim 12, wherein the operative surface is sized to substantially overlie an opening of the access port.
14. The septum according to claim 12, wherein the chamfer portion is adapted to apply to the operative surface a radially compressive component of a force applied substantially perpendicularly thereto by assembly of the access port.
15. The septum according to claim 12, wherein the chamfered portion comprises a fillet joining the operative surface to the attachment portion.
16. The septum according to claim 12, wherein the chamfered portion comprises an angled surface joining the operative surface to the attachment portion.
17. The septum according to claim 12, wherein the chamfered portion comprises a stepped surface joining the operative surface to the attachment portion.
18. The septum according to claim 12, wherein the operative surface is formed of a flexible polymeric material.

RECEIVED
CENTRAL FAX CENTER

JUN 4 2007

Serial No.: 10/752,257

Group Art Unit: 3767

Attorney Docket No.: 10123 - 04001

EVIDENCE APPENDIX

No evidence has been submitted herewith or is relied upon in the present appeal.

RECEIVED
CENTRAL FAX CENTER

JUN 04 2007

Serial No.: 10/752,257

Group Art Unit: 3767

Attorney Docket No.: 10123 - 04001

RELATED PROCEEDINGS APPENDIX

There are no related proceedings and/or decisions which relate to the present appeal.